UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

AMERICAN TRUCKING ASSOCIATIONS, INC.; CUMBERLAND FARMS, INC.; M&M TRANSPORT SERVICES, INC.; and NEW ENGLAND MOTOR FREIGHT, INC.,	)	
Plaintiffs,	)	
v.	)	C.A. No. 18-378 WES
PETER ALVITI, JR., in his official capacity as Director of the Rhode Island Department of Transportation; and RHODE ISLAND TURNPIKE AND BRIDGE AUTHORITY,	)	**FILED UNDER SEAL**
Defendants.	)	

MEMORANDUM AND ORDER ON MOTION TO AMEND ANSWER

Before the Court is Defendants' Motion to Amend Their Answer to Assert the Defense of Unclean Hands, ECF No. 130. For the reasons that follow, the Motion is GRANTED.

I. Background

The following facts, derived from Defendants' Motion to Amend, ECF No. 130, are accepted as true for the purposes of this Motion. See Morell v. United States, 185 F.R.D. 116, 117–18 (D.P.R. 1999). General familiarity with the case is assumed.

On May 26, 2015, an employee of CDM Smith sent an email to a vice president at the American Transportation Research Institute ("ATRI"), an affiliate of Plaintiff American Trucking Associations ("ATA"), warning that "RI is on a quest to impose truck tolls in

RI[,]" and requesting a phone call to discuss. See Mot. to Amend 4, ECF No. 130. The ATRI vice president later asked if CDM Smith was the source of a statistic estimating that "trucks cause 80% of all road damage in RI[.]" Id. The CDM Smith employee responded that the statistic was computed by the Rhode Island Department of Transportation ("RIDOT"), based on a 1979 report from the U.S. Government Accountability Office stating that a loaded five-axle truck causes damage equivalent to that of 9600 cars. Id. at 5. The CDM Smith employee further stated that RIDOT "computed equivalent cars for each truck class[,] [a]dded up the total, and computed the proportion of [passenger cars] represented by heavy trucks (class 6 and up)." Id. RIDOT's reliance on the 1979 GAO report was not a closely guarded secret, as the RhodeWorks legislation explicitly referenced the GAO report. See R.I. Gen. Laws § 42-13.1-2(8).[1]

II. Discussion

Defendants argue that the ATA wrongfully solicited information it knew was confidential and protected by the legislative and deliberative process privileges. See Mot. to Amend 2. Defendants thus wish to assert the defense of unclean hands against Plaintiffs' prayer for injunctive relief. See Dr. Jose S.

[1] Plaintiffs note as well that a publicly available CDM Smith report referenced the report. See Pls.' Opp'n 6 n.3, ECF No. 139 (citing Rhode Island Department of Transportation, RhodeWorks (June 17, 2015), http://www.dot.ri.gov/documents/news/Truck-Car-Studies-FINAL.pdf).

Belaval, Inc. v. Perez-Perdomo, 488 F.3d 11, 15 (1st Cir. 2007). Leave to file amended pleadings shall be freely given where justice so requires. Fed. R. Civ. P. 15(a). The Court "enjoys significant latitude in deciding whether to grant leave to amend." ACA Fin. Guar. Corp. v. Advest, Inc., 512 F.3d 46, 55 (1st Cir. 2008). "Grounds for denial include . . . futility of amendment." Id. at 56 (citation and quotations omitted).

Plaintiffs argue that Defendants' Motion to Amend should be denied as futile. More specifically, Plaintiffs contend that (a) the amended pleading fails to allege that the ATA solicited information, (b) the information at issue was not secret, (c) the privileges – which have already been rejected in a related context by the Court's October 23, 2020 Opinion and Order, ECF No. 129 – were waived by the CDM Smith employee's actions, (d) the alleged misconduct is insufficiently related to the merits of the case, and (e) the alleged misconduct implicates only one of several Plaintiffs. See Pls.' Opp'n 4-12, ECF No. 139.

The Court agrees that these arguments cast doubt on the applicability and potency of the unclean hands doctrine. But Defendants have pointed to at least some evidence that could support an unclean hands defense. If it had been included in Defendants' original Answer, the defense would have survived a motion to strike. See Fed. R. Civ. P. 12(f) ("The court may strike from a pleading an insufficient defense or any redundant,

immaterial, impertinent, or scandalous matter."); see also DeMoulis v. Sullivan, CIV. A. 91-12533-Z, 1993 WL 81500, at *6 (D. Mass. Feb. 26, 1993) ("[M]otions [to strike] are generally disfavored and will usually be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties." (citation and quotations omitted)). More importantly, the tardiness of this affirmative defense does not prejudice Plaintiffs and is justified by the fact that Defendants only recently obtained the emails in question. See Klunder v. Brown U., 778 F.3d 24, 35 (1st Cir. 2015). Thus, in its discretion, the Court concludes that the amendment should be allowed. See ACA Fin. Guar. Corp., 512 F.3d at 55 ("[R]ule [15(a)] reflects a liberal amendment policy[.]" (citation omitted)).

III. Conclusion

For the reasons given herein, Defendants' Motion to Amend Their Answer to Assert the Defense of Unclean Hands, ECF No. 130, is GRANTED.

IT IS SO ORDERED.

William E. Smith
District Judge
Date: December 7, 2020